

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PNC EQUIPMENT FINANCE, LLC,)	
)	
Plaintiff,)	
v.)	Case No.
)	
KOLYA CORP. and NICOLAE REBEJA,)	
)	
Defendants.)	

**VERIFIED COMPLAINT
FOR REPLEVIN AND MONEY DAMAGES**

NOW COMES Plaintiff PNC Equipment Finance, LLC (“PNCEF”), by and through counsel, and for its Verified Complaint for Replevin and Money Damages against Kolya Corp. and Nicolae Rebeja (collectively, the “Defendants”), states as follows:

PARTIES

1. PNCEF is a Delaware limited liability company with its principal place of business located at 655 Business Center Drive, Suite 250, Horsham, PA 19044, and is fully licensed to do business in the State of Illinois. PNCEF’s sole member is PNC Bank National Association (“PNC Bank”), a national banking association with its principal place of business in the State of Pennsylvania.

2. Kolya Corp. is an Illinois corporation with its principal place of business located at 4463 Timber Ridge Ct., Joliet, Illinois 60431.

3. Nicolae Rebeja is a citizen of the State of Illinois who, upon information and belief, resides at 340 E. North Water St., Unit 3810, Chicago, IL 60611.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) insomuch as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2), because a substantial part of the events or omissions giving rise to PNCEF's claims occurred in this judicial district, and because the Defendants reside in this judicial district.

FACTS COMMON TO ALL COUNTS

6. On April 1, 2019, PNCEF, as lender, and Kolya Corp., as borrower, entered into Loan and Security Agreement No. xx2279 (the "Agreement") wherein PNCEF financed Kolya Corp.'s acquisition of: Five (5) 2014 Great Dane 53' Reefer Trailers with Carrier Reefer units, Serial Nos. 7DK3898, 7DJ6751, 7DK3719, 7DK2348 and 7DK0032, Vin Nos. 1GRAA0628EW702779, 1GRAA0620EW702758, 1GRAA0627EW702773, 1GRAA0622EW702793 and 1GRAA0627EW702837 (collectively the "Collateral"). A true and correct copy of the Agreement is attached hereto as Exhibit 1.

7. Pursuant to the Agreement, Kolya Corp. agreed to make forty-eight (48) consecutive monthly installments of \$5,234.77. *See* Exhibit 1.

8. As set forth in the Agreement, Kolya Corp. granted PNCEF a first priority security interest in the Collateral. *See* Exhibit 1, ¶ 6.

9. PNCEF perfected its security interest in the Collateral by recording its lien as first lienholder on the respective Certificates of Title for the Collateral (the "Certificates of Title"). True and correct copies of the Certificates of Title are attached hereto as Group Exhibit 2. PNCEF

further filed its UCC-1 Financing Statement. A true and correct copy of the UCC-1 financing statements is attached hereto as Exhibit 3.

10. To induce PNCEF to enter into the Agreement, Nicolae Rebeja executed a Guaranty Agreement (the “Personal Guaranty”) wherein Nicolae Rebeja guaranteed the full and prompt payment and performance of all of Kolya Corp.’s obligations to PNCEF. A true and correct copy of Personal Guaranty is attached hereto as Exhibit 4.

11. Kolya Corp. defaulted under the Agreement by failing to make the payment due March 1, 2020.

12. Nicolae Rebeja failed to make payment as required pursuant to his Personal Guaranty.

13. Upon the occurrence of default, PNCEF is entitled to payment of any and all amounts which may be then due and payable, plus all payments remaining through the end of the Agreement’s term discounted at the rate of three percent (3%) per annum, and interest and other additional amounts payable under the Agreement, which is \$206,370.96. See Exhibit 1, ¶ 14.

14. PNCEF is further entitled to payment of late charges. See Exhibit 1, ¶ 3.

15. PNCEF is also entitled to NSF fees. See Exhibit 1, ¶ 3.

16. PNCEF is entitled to prejudgment interest at the rate of 18% per annum. See Exhibit 1, ¶ 20.

17. PNCEF is further entitled to attorneys’ fees and costs. See Exhibit 1, ¶ 14.

18. Upon an event of default, PNCEF is also entitled to possession of the Collateral. See Exhibit 1, ¶ 15.

19. Following the payment default, PNCEF recovered four (4) 2014 Great Dane 53’ Reefer Trailers with Carrier Reefer units. Kolya Corp. remains in possession and control of one

(1) 2014 Great Dane 53' Reefer Trailer with Carrier Reefer unit, Vin No. 1GRAA0620EW702758 (the "Remaining Collateral").

20. Kolya Corp. shall be credited for the net proceeds received from sale of the Collateral.

21. Kolya Corp. has failed and refused to make payment due and owing under the Agreement despite demand.

COUNT I
BREACH OF CONTRACT AGAINST KOLYA CORP.

22. PNCEF repeats and realleges paragraphs 1 through 21 as though fully set forth herein.

23. PNCEF has fully performed its obligations under the Agreement.

24. Kolya Corp. defaulted under the Agreement by failing to make all necessary payments when due.

25. As a result of Kolya Corp.'s payment default, PNCEF is entitled to payment of \$206,370.96, plus late charges, NSF fee, prejudgment interest accruing at the rate of 18% per annum from the date of default until entry of judgment, and attorneys' fees and costs.

WHEREFORE, PNC Equipment Finance, LLC respectfully requests that this Court enter Judgment in its favor and against Kolya Corp. in the amount of \$206,370.96, plus late charges, NSF fees, prejudgment interest accruing at the rate of 18% per annum from the date of default until entry of judgment, and attorneys' fees and costs, and grant such other and further relief which this Court deems just.

COUNT II
BREACH OF GUARANTY AGAINST NICOLAE REBEJA

26. PNCEF repeats and realleges paragraphs 1 through 25 as though fully set forth herein.

27. Nicolae Rebeja defaulted under the Personal Guaranty by failing and refusing to make payment when due under the Agreement and his guaranty thereof.

28. As a result of Nicolae Rebeja' payment default under the Personal Guaranty, PNCEF is entitled to payment in the amount of \$206,370.96, plus late charges, NSF fees, prejudgment interest accruing at the rate of 18% per annum from the date of default until entry of judgment, and attorneys' fees and costs.

WHEREFORE, PNC Equipment Finance, LLC respectfully requests that this Court entered Judgment in its favor and against Nicolae Rebeja in the amount of \$206,370.96, plus late charges, NSF fees, prejudgment interest accruing at the rate of 18% per annum from the date of default until entry of judgment, and attorneys' fees and costs, and grant such other and further relief which this Court deems just.

COUNT III
REPLEVIN AGAINST KOLYA CORP.

29. PNCEF repeats and realleges paragraphs 1 through 28 as though fully set forth herein.

30. This Count is brought pursuant to 735 ILCS § 5/19-101, *et seq.*, made applicable to this proceeding pursuant to Federal Rule of Civil Procedure 64.

31. PNCEF has a first priority security interest in the Collateral.

32. PNCEF has recovered four (4) 2014 Great Dane 53' Reefer Trailers with Carrier Reefer units.

33. Kolya Corp. remains in possession and control of the Remaining Collateral: one (1) 2014 Great Dane 53' Reefer Trailer with Carrier Reefer unit, Vin No. 1GRAA0620EW702758.

34. As a result of Kolya Corp.'s default under the Agreement, PNCEF is entitled to exercise its contractual right to take possession of the Remaining Collateral. *See* Exhibit 1, ¶15.

35. PNCEF has been unable to secure the Remaining Collateral by peaceful means.

36. Kolya Corp. is wrongfully and unlawfully detaining the Remaining Collateral from PNCEF.

37. The Remaining Collateral has not been taken for any tax, assessment, or fine levied by virtue of any law of this State, against the property of such plaintiff, or against him or her individually, nor seized under any lawful process against the goods and chattels of such plaintiff subject to such lawful process, nor held by virtue of an order of replevin against such a plaintiff.

38. PNCEF has made demand upon Kolya Corp. for the return of the Remaining Collateral, but Kolya Corp. has failed and refused to return same.

39. PNCEF will suffer irreparable damages if the Remaining Collateral is not returned to PNCEF.

40. PNCEF estimates the value of the Remaining Collateral at \$25,500.00, depending on market and condition.

41. Upon information and belief, the Remaining Collateral is located at 4463 Timber Ridge Ct., Joliet, Illinois 60431.

WHEREFORE, PNC Equipment Finance, LLC respectfully requests that this Court entered an Order directing the U.S. Marshal, or any other designated officer, to use all necessary force to repossess the Remaining Collateral, or any portion thereof from Kolya Corp. at 4463 Timber Ridge Ct., Joliet, Illinois 60431, or wherever it may be found, and enter a judgment against

Kolya Corp. for the value of any portion of the Collateral not so returned, plus attorneys' fees and costs, as well as all other and further relief which this Court deems just.

COUNT IV
DETINUE AGAINST KOLYA CORP.

42. PNCEF repeats and realleges paragraphs 1 through 41 as though fully set forth herein.

43. The Remaining Collateral is in Kolya Corp.'s possession and control.

44. PNCEF is entitled to possession of the Remaining Collateral due to the payment default under the Agreement. See Exhibit 1, ¶ 15.

45. Kolya Corp. is wrongfully retaining possession of the Remaining Collateral, because Kolya Corp. defaulted under the terms of the Agreement by failing to make timely payments when due, and Kolya Corp. has failed to surrender the Remaining Collateral despite demand.

WHEREFORE, PNC Equipment Finance, LLC respectfully requests that this Court entered an Order compelling Kolya Corp. to surrender the Remaining Collateral to PNC Equipment Finance, LLC at a place and time directed by PNC Equipment Finance, LLC within fourteen (14) days of this Court's entry of judgment.

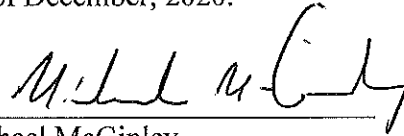
PNC EQUIPMENT FINANCE, LLC,

By: /s/ C. Randall Woolley
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VERIFICATION BY CERTIFICATION

Under penalties as provided by law, the undersigned certifies that the statements set forth in the Verified Complaint for Replevin and Money Damages are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certified as aforesaid that he verily believes the same to be true.

Declared under penalty of perjury this 18 day of December, 2020.

A handwritten signature in black ink, appearing to read "Michael McGinley", written over a horizontal line.

Michael McGinley
Vice President - Litigation and Recovery
PNC Equipment Finance, LLC